

Application Serial No. 10/733,901
Amendment dated: June 26, 2006
Response to Office Action dated: February 1, 2006

Remarks/Arguments

These remarks are in response to the Office Action dated February 1, 2006. This reply is timely filed. At the time of the Office Action, claims 1-41 were pending in the application. Applicant appreciates the Examiner's acknowledgement that claims 14-31 are allowed. Claims 3, 6, 12, 13, 16, 17, 19 and 25 stand objected to as being dependent upon a rejected base claim, but the Examiner has indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Note that claim 25 was previously canceled. Claims 5, 9, 11 and 33-41 were objected to as being dependent upon a rejected base claim, but the Examiner has indicated that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1-31 stand rejected under 35 U.S.C. §112, second paragraph. Claims 1, 2, 4, 7, 10 and 32 were rejected under 35 U.S.C. 102(b). Claim 8 was rejected under 35 U.S.C. §103(a). The rejections are set out in more detail below. Claims 1 and 32 have now been amended. Claims 3 and 33 were canceled. Please charge Deposit Acct. No. 50-2884 in the amount of \$225 for a two month extension of time.

I. Allowable Subject Matter

Applicant notes with appreciation that the Examiner has indicated that claims 3, 5, 6, 9, 11-13 and 33-41 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In response, independent claim 1 has been amended to include the language of dependent claim 3. Claim 3 was canceled. Applicant submits that claim 1 is now allowable and the remaining dependent claims 2 and 4-13 are allowable by virtue of their dependence on an allowable base claim. Similarly, independent claim 32 has been amended to include the language of claim 33. Claim 33 was canceled. Applicant submits that independent claim 32 is allowable as well as the remaining dependent claims 34-41 by virtue of their

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dependence on an allowable base claim. The application is now believed to be in condition for allowance.

II. Brief Review of Applicant's Invention

Prior to addressing the Examiner's rejections on the art, a brief review of applicants' invention is appropriate. The invention concerns a method and apparatus for securing a foundation form that is disposed on a moisture barrier membrane. The method includes the steps of positioning one end of a concrete form stake in a mating structure of a plug, penetrating the moisture barrier membrane with a tip end of the plug, and forming a seal between a flange extending around the periphery of the plug and the moisture barrier membrane.

The invention also concerns a prepared foundation site. (§ [0019] Figs. 3A-3C). The prepared foundation site includes a moisture barrier membrane that is disposed over portions of a foundation site. The prepared foundation site also includes a plurality of plugs that traverse the moisture barrier membrane and are embedded in the soil. § [0020]. The plugs comprise an elongated body portion having a tip end, as well as a peripheral flange § [0022] that is disposed adjacent to the moisture barrier membrane. The peripheral flange forms a seal with the moisture barrier membrane and surrounds an area where the plug's elongated portion traverses the moisture barrier membrane. For more detailed information regarding this aspect of the invention, please refer to § [0019-0022].

III. Claim Rejections Under 35 USC §112, ¶2

Claims 1-31 stand rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner continues to take issue with independent method claim 1 for not positively claiming the structural limitations "foundation form," "stake," "plug," and "moisture barrier membrane." With regards to independent claim 24, the Examiner still takes issue for not positively claiming the structural limitation "moisture barrier." Accordingly, claim 1 was amended by positively

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claiming "foundation form," "stake," "plug," and "moisture barrier membrane." Claim 24 was amended by positively claiming "moisture barrier." In view of the foregoing, applicant submits that claims 1-31 are in a condition for allowance and the rejection under 35 USC §112, ¶2 must be withdrawn.

IV. Claim Rejections Under 35 USC §102(b)

Claims 1, 2, 4, 7, 10 and 32 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,564,232 to Callaway. With respect to claim 1, according to the Examiner, Callaway discloses a method including the steps of positioning one end of a stake (10) in a mating structure (18) of a plug (14); penetrating a moisture barrier (30) with a tip (16) of the plug (14); and forming a seal between a flange (18) that extends around a periphery of the plug (14) and the moisture barrier (30). With respect to claim 2, according to the Examiner, Callaway further discloses the step of forming a seal until the flange (18) is disposed adjacent the moisture barrier (30), see figure 10. With respect to claim 4, according to the Examiner, Callaway further details the step of selecting a mating structure (18) that has a bore (not shown) in the plug (14) to receive a portion of the stake (10). In reference to claim 7, according to the Examiner, the step of selecting a mating structure (18) further includes allowing the stake (10) to be removable from the plug (30). Regarding claim 10, according to the Examiner, the method further includes removing the stake (10) from the mating structure (18). Applicant submits that the rejection of claims 1, 2, 4, 7, and 10 under 35 U.S.C 102(b) as being anticipated by Callaway is moot since independent claim 1 is believed to be allowable after the subject matter of objected to claim 3 was merged into independent claim 1. The remaining claims 2, 4, 7 and 10 are allowable by virtue of their dependence on an allowable base claim. Applicant believes that claims 1, 2, 4, 7 and 10 are now in a condition for allowance.

Similarly, in reference to claim 32, according to the Examiner, Callaway discloses a prepared foundation site, as shown in figure 2, including a moisture barrier (30) disposed over a portion of the site, see figure 1, a plurality of plugs (10) traversing the

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moisture barrier (30) so as to be embedded in the soil (S) beneath the moisture barrier (30), wherein the plugs (14) include an elongate body having a tip end (16) and a peripheral flange (18) disposed on the elongate body opposite the tip end (16) such that the peripheral flange (18) forms a seal with the moisture barrier (30) surrounding an area where the elongate portion traverses the moisture barrier (30). Applicant submits that the rejection of independent claim 32 under 35 U.S.C 102(b) as being anticipated by Callaway is moot since the language of objected to claim 33 was merged into independent claim 32. Applicant believes that claim 32 is now in a condition for allowance.

V. Claim Rejections Under 35 USC §103(a)

Claims 8 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,564,232 to Callaway in view of U.S. Patent No. 3,785,606 to Green. According to the Examiner, Callaway discloses the basic claimed method except for the inclusion of the step of securing the stake to the foundation form. Green teaches that it is known in the art to secure a foundation form (13) using a stake (40). The Examiner reasons that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Callaway with the form of Green in order to ensure that whatever is positioned on the moisture barrier is contained thereon. In view of the current amendment to independent claim 1 based on allowable subject matter, the obviousness rejection is now believed to be moot. Further, none of the references cited by the Examiner suggest or teach the combination as recited by the Examiner. Specifically, there is no teaching of combining the method for securing a foundation form disposed on a moisture barrier membrane including the step of securing a concrete stake to a foundation form as recited in claim 8. Thus, the Examiner has failed to establish a *prima facie* case of obviousness. Accordingly, applicant believes that claim 8 is now in a condition for allowance.


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VI. Conclusion

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. Nevertheless, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicants respectfully request reconsideration and prompt allowance of the pending claims.

Respectfully submitted,

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Date


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